UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY JOHN GOODACRE, BARRY MERRICK, and
DAVID HITCHMAN

Appeal 2009-000748
Application 10/010,190
Technology Center 2100

Decided:[1] July 10, 2009

Before JOSEPH L. DIXON, THU A. DANG, and STEPHEN C. SIU,
Administrative Patent Judges.

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date
shown on this page of the decision. The time period does not run from the
Mail Date (paper delivery) or Notification Date (electronic delivery).

I. STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-39 and 41-49. Claim 40 was canceled. The Appellants appeal the rejected claims therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

The Invention

The invention at issue on appeal relates to a method and a computer program product for automatically updating the display of a mobile device when the registered content of data of interest to the mobile device changes (Spec. 5).

Illustrative Claim

Claim 1, which further illustrates the invention, follows.

> 1. A method of customizing arrangement of content displayed on a display device of a mobile computing device, the method comprising:
>
> an act of creating a template file at a network computing device, which represents a layout for displaying content at the mobile computing device that is updated automatically and without user intervention, by performing the acts of:
>
> generating static content and layout information corresponding to the static content;
>
> generating one or more references to dynamic content and layout information corresponding to the one or more references to

dynamic content, the dynamic content changing over time; and

including the static content, the one or more references to the dynamic content, as well as corresponding layout information in the template file;

an act of generating computer-executable instructions for substituting the dynamic content at the mobile computing device, the substituted dynamic content being stored separate from the template file and substituted for the one or more references to the dynamic content included in the template file;

an act of transferring the template file and the computer-executable instructions to the mobile computing device in order to customize arrangement of the dynamic content at the mobile computing device wherein the computer-executable instructions are executed at the mobile computing device to facilitate merging updated displayable dynamic content at the mobile computing device with the layout information corresponding to the one or more references to dynamic content, wherein the template file, including the layout information is stored at the mobile computing device; and

an act of monitoring content denoted in a registration and when dynamic content of interest changes, transporting the dynamic content to the mobile computing device where the transported dynamic content is merged with the layout information corresponding to the one or more references to dynamic content.

The References

Brim	US 5,835,914	Nov. 10, 1998
Donohue	US 5,987,480	Nov. 6, 1999
Hill	US 6,023,714	Feb. 8, 2000
		(Filed Apr. 24, 1997)
Pfister	US Pub. 2003/0046365 A1	Mar. 6, 2003
		(Filed Sep. 4, 2001)
Orhomuru	US Pub. 2003/0061106 A1	Mar. 27, 2003
		(Filed Sep. 21, 2001)
Omoigui	US Pub. 2003/0126136 A1	Jul. 3, 2003
		(Filed Jun. 24, 2002)
Twaddle	US Pub. 2004/0015476 A1	Jan. 22, 2004
		(Filed Aug. 31, 2001)

The Rejections

Claims 1-14, 17-19, 24-39, 41-46 and 48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pfister and Donohue in view of Hill, further in view of Brim.

Claims 16 and 20-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pfister and Donohue in view of Hill, further in view of Brim, and further in view of Orbormuru.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Pfister and Donohue in view of Hill, further in view of Brim, and further in view of Twaddle.

Claims 47 and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pfister and Donohue in view of Hill, further in view of Brim, and further in view of Omoigui.

II. ISSUE

Have Appellants shown that the Examiner erred in the obviousness rejection of claim 1 by failing to identify a teaching of "monitoring content denoted in a registration and when dynamic content of interest changes, transporting the dynamic content to the mobile computing device" in the prior art, as recited in independent claim 1?

III. PRINCIPLES OF LAW

Prima Facie Case of Unpatentability

The allocation of burden requires that the United States Patent and Trademark Office (USPTO) produce the factual basis for its rejection of an application under 35 U.S.C. §§ 102 and 103. *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967)). Appellant has the opportunity on appeal to the Board of Patent Appeals and Interferences (BPAI) to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006).

Claim Interpretation

During prosecution before the USPTO, claims are to be given their broadest reasonable interpretation. The scope of a claim cannot be narrowed by reading disclosed limitations into the claim. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

"Giving claims their broadest reasonable construction 'serves the public interest by reducing the possibility that claims, finally allowed, will be given broader scope than is justified.'" *In re American Academy of*

Science Tech Center, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (quoting *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984)). "Construing claims broadly during prosecution is not unfair to the applicant . . . because the applicant has the opportunity to amend the claims to obtain more precise claim coverage." *Id.* at 1364.

The claim construction analysis begins with the words of the claim. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Absent an express intent to impart a novel meaning to a claim term, the words take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Brookhill-Wilk 1, LLC. v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003).

Obviousness

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

IV. FINDINGS OF FACT

The following findings of fact (FFs) are supported by a preponderance of the evidence.

Brim

1.   Brim discloses that Web servers and client computers are connected through the Internet (col. 1, ll. 15-20). A software component, ActiveX Control, running with a Web browser can establish and maintain

interactive sessions between the user and the Web servers to display
animation, or present regularly updated information (col. 1, ll. 24-32). "[A]
Stock Ticker ActiveX Control can display current stock prices that are
continuously scrolled across a defined area within a Web page that is
displayed by a Web browser." (col. 1, ll. 37-40).

2.   Brim further discloses that "[c]urrently, when a user exits a
Web page, the Web browser destroys the ActiveX Controls contained
therein. If the user later returns to a previously viewed Web page, the Web
browser must create a new set of ActiveX Controls . . . this is acceptable
because a Stock Ticker control needs only to continually retrieve the latest
stock prices and display them." (col. 1, ll. 44-51).

V. ANALYSIS

The Examiner sets forth a detailed explanation of initial showing of
the proffered prima facie case for obviousness. Therefore, we look to
Appellants' Brief to show error in the Examiner's initial showing of
proffered prima facie case for obviousness.

The Common Feature in Claims

Independent claims 1 and 41 recite limitations: "monitoring content
denoted in a registration and when dynamic content of interest changes,
transporting the dynamic content to the mobile computing device."
Independent claims 27 and 43 contain similar limitations with different
wording: "as a result of the network computing device monitoring content
denoted in a registration such that when dynamic content of interest changes,

the dynamic content is transported to the mobile computing device." Thus, the scope of each of the independent claims under the broadest yet reasonable interpretation includes the following limitations: the dynamic content is denoted in a registration; the network computing device monitors the registered dynamic content; and whenever a change of the registered dynamic content of interest occurs, the network computing device transports the changed content to the mobile computing device.

The Rejections under 35 U.S.C §103 (a)

With respect to independent claim 1, Appellants contend that the Examiner fails to identify and Brim does not disclose denoting dynamic content by a registration (App. Br. 18, 25; Reply Br. 6-7).

We agree with Appellants' contention. The Examiner maintains that "the claims do not specify where the registration is located. The registration with the dynamic data could be located in the webpage found at the client, just as is described by Pfister, and Brim, where the client notifies the server of the dynamic information that needs monitoring and updating." (Ans. 29-30). However, the Examiner states that Pfister does not teach "monitoring content denoted in a registration and when dynamic content of interest changes, transporting the dynamic content to the mobile computing device" (Ans. 6). We find that Brim only discloses utilizing ActiveX Control with a Web browser at the client site, in a client/server environment, to present updated information such as stock price (FF1). The Examiner has not shown and we do not readily find where Brim teaches the registration of the dynamic content at the client site.

Appellants further contend that Brim does not disclose that the network computing device monitors the change of the registered dynamic content (App. Br. 18-20; Reply Br. 6-7).

We agree with Appellants' contention. We find independent claim 1 requires that network computing device monitors the registered dynamic content. Brim only discloses ActiveX Controls "continually retrieve the latest stock prices and display them." (FF2). However, the Examiner states:

> [B]rim teaches a well-known technique, where a mobile handheld device continuously retrieves dynamic data, such as the stock prices. The client already established a session letting the server know the information that is required. In other words, the server scans or monitors the dynamic data requested by the client and listed on the webpage.

(Ans. 29.)

We disagree with the Examiner's assertion which is not supported by the cited portions of Brim. The ActiveX Control of Brim is running with the Web browser at the client site to continually retrieve the dynamic content. Thus, one of ordinary skill in the art would not read continually retrieving dynamic content at the client site as a network computing device (server) monitors the change of the registered dynamic content.

Appellants also contend that Brim does not disclose "when the dynamic content changes, the dynamic content are transported to the mobile computing device" (App. Br. 26-27; Reply Br. 5-6).

The Examiner maintains that "whenever there is a change in the dynamic data, the server obtains this information on behalf of the client,

and then sends the changed data in a continuous manner (immediately after the data is updated) to the client, . . . " (Ans. 29). "If there is continuous retrieval by the client, there must also be continuous sending on the part of the server." (Ans. 28).

We disagree with the Examiner. The disclosure of Brim does not support the Examiner's assertions. Brim discloses that the client's ActiveX Control retrieves the dynamic content from the server in continuous manner regardless whether or not the dynamic content changes (FF1 and FF2). We find independent claim 1, however, requires that the network computing device transports the changed dynamic content in a discrete manner when the dynamic content changes. The Examiner's reliance upon Brim to reject those limitations of independent claim 1 does not pass muster because the combination of Brim and other references does not teach or fairly suggest the argued limitation in the claim 1.

We hold that Appellants have shown that the Examiner erred by failing to identify a teaching of "monitoring content denoted in a registration and when dynamic content of interest changes, transporting the dynamic content to the mobile computing device" in the prior art, as recited in independent claim 1.

The rejection of the dependent claims 2-26 and 45-47 contains the same deficiency. Appellants, thus, have demonstrated error in the Examiner's prima facie case for obviousness of the subject matter of claims 1-26 and 45-47.

Independent claims 27, 41 and 43 contain similar limitations to those found in claim 1. Appellants rely on similar arguments as set forth with

respect to independent claim 1. We similarly find that Appellants have demonstrated error in the Examiner's prima facie case for obviousness of the subject matter of independent claims 27, 41 and 43. The rejection of dependent claims 28-39, 42, 44 and 48-49 also contains the same deficiency. Hence, Appellants' argument persuades us the Examiner erred in rejecting claims 27-39, 42-44 and 48-49.

We, therefore, cannot sustain the rejection of claims 1-39 and 41-49 under 35 U.S.C. § 103.

VI. CONCLUSION

We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-39 and 41-49.

VII. ORDER

We reverse the obviousness rejections of claims 1-39 and 41-49.

REVERSED

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